

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN THE MATTER OF

Case No. 13-12436

WILLIAM JAY FUNK
JOSEPHINE ANN FUNK

(Judge Beth A. Buchanan)

DEBTORS

TRUSTEE'S APPLICATION TO SELL
PROPERTY OF THE ESTATE, TO-WIT:
UNDIVIDED ONE-HALF INTEREST IN
605 DOWNER TRAIL, PRESCOTT,
YAVAPAI COUNTY, ARIZONA 86305

1. This application is brought under Section 363(b) of the Bankruptcy Code and is an application by the Trustee to sell the following described property of the estate according to the following terms:

Property: Undivided one-half interest in real estate located at 605 Downer Trail, Prescott, Yavapai County, Arizona 86305.

The circumstances relating to this property is as follows: the debtor, William Ray Funk ("debtor-husband") owns an undivided one-half interest in real estate with a street address of 605 Downer Trail, Prescott, Yavapai County, Arizona 86305 and designated on the land records of the county as tax parcel 111 -10-006D. A copy of a legal description is attached.

It appears according to documents supplied the Trustee that the debtor-husband owns an undivided one-half interest and his brother, David Funk, owns the other undivided one-half interest in this tract. It comes to them under the terms of the Last Will & Testament of their mother, Barbara J. Funk and the provisions of a "Self-Declaration of Trust" by Barbara J. Funk which, prior to the time of the debtors' filing and because of the death of Barbara J. Funk, with no surviving spouse, no minor heirs and no surviving parents; caused her ownership interest in the real estate to pass to her two sons, which are the persons set forth above. (As per "Trust Declaration/Certification" filed in the Official Land Records of Yavapai County, Arizona, Book 4820, page 498 on June 30, 2011; and in which these two persons are designated according to paragraph 8 of such Certificate as the "current beneficiaries of the herein named trust") A copy of this "Declaration" is attached to this motion.

The property appears not to have any mortgage liens or other lien claims against it, other than proration of taxes due and owing at the time of closing.

David Funk is not married.

Debtor husband entered into an agency agreement on August 4, 2011, which appears to have been renewed from time to time after its initial expiration date of August 4, 2012 with RE/MAX Mountain Properties; Paul Schneider as an agent, which does business at 5010 Bear Way, Prescott, Arizona 86301, to pay that agency an 8% real estate commission for the sale of the property. The real estate is unimproved - a vacant tract of land.

Terms of Sale: Trustee, along with the co-owner of the property, David Funk, have entered into a contract to sell the property to Douglas Rothrock and Nancy Rothrock on January 23, 2014 for the sum of Sixty Thousand Dollars (\$60,000.00); \$2,000.00 as a down payment and the balance to be paid at the time of closing. This will be a cash transaction.

The matter must close by April 23, 2014.

The Trustee will give a Trustee's Deed which he will prepare. The matter will be closed by a title company, Yavapai Title Agency, Inc., 123 North Montezuma, Prescott, AZ 86301.

The debtor claims no state law exemption in any sale proceeds.

The Trustee believes that the following would be deducted from the gross sales price at the time of closing:

- 8% real estate commission. In conformity with an earlier Order of this Court entered October 10, 2013 (Doc. 42) the Trustee has employed Paul Schneider as an agent, RE/MAX Mountain Properties, 5010 Bear Way, Prescott, AZ 86301.
- proration of real estate taxes to the date of closing. Taxes are annually \$1242.00.
- 1% to cover the closing expense occasioned by the title company and to cover an owner's title insurance policy in favor of the buyers since the buyers are purchasing the property for cash and not securing a mortgage loan.

The Trustee would supplement this sale information in the event other deductions should materialize.

Finally, it appears that under the agency agreement, the real estate agent for the debtor will divide any commission received - the 8% - with any similar agent representing a buyer, so in this case it appears that the commission will be so divided - 4% to seller's agent and 4% to the buyer's agent.

Total appraised value:

Debtors listed the property for \$82,000.00 and has been listed as such for apparently two years and until the time of this present offer.

Debtor schedules the real estate in his bankruptcy filing as having an undivided one-half interest in the tract of \$30,000.00.

According to the Yavapai County Assessor valued the property in 2010 at \$73,500.00 and in 2012 at \$46,500.00.

2. In addition, the Trustee attempted to sell this property earlier, based upon an offer received by the debtor pre-filing, on a Motion made June 6, 2013 for \$80,000.00. Subsequently the buyers in that transaction terminated the contract within its terms and the Trustee withdrew that motion on June 20, 2013 (Doc. 23.)

3. Your Trustee believes that sale of the designated property according to the terms set forth will be to the benefit of the bankruptcy estate.

4. It is requested in consideration of this application that notice be given to creditors pursuant to Section 102 (l)(a) and (b) of the Bankruptcy Code and Bankruptcy Rule 2002 (a) of the Bankruptcy Rules; but that no actual hearing be held under such notice unless such a hearing is requested timely by a party in interest, and within 21 days of such notice.

WHEREFORE, E. Hanlin Bavely, the Trustee, prays the Court that an order issue herein allowing the Trustee to sell the property designated in this application according to the terms set forth in this application and to the buyer described in this application, and such other relief to which the Trustee may herein be entitled.

/s/ E. Hanlin Bavely

E. Hanlin Bavely, Trustee
850 Tri-State Building
432 Walnut Street
Cincinnati, Ohio 45202

CERTIFICATE

I certify that on February 12, 2014 a copy of the foregoing Withdrawal was served on the following registered ECF participants, electronically through the Court's ECF System at the email address registered with the Court:

Office of the U.S. Trustee
Robert A. Goering

and on the following by ordinary U.S. mail addressed to

William Jay Funk
Josephine Ann Funk
1347 Custer Street
Cincinnati, OH 45208

Paul E. Schneider (Seller's Agent)
RE/MAX Mountain Properties
5010 Bear Way
Prescott, AZ 86301

David Funk
4311 Spencer Street
Las Vegas, NV 89119

Theresa Koshlek (Buyer's Agent)
Realty Executives Northern AZ
503 E. Gurley Street
Prescott, AZ 86301

/s/ E. Hanlin Bavely
E. Hanlin Bavely, Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

IN THE MATTER OF

Case No. 13-12436

WILLIAM JAY FUNK
JOSEPHINE ANN FUNK

(Judge Beth A. Buchanan)

Debtors

NOTICE OF FILING

E. Hanlin Bavely, Trustee has filed papers with the Court to sell at private sale, through a real estate agent, a vacant tract of real property located at 605 Downer Trail, Prescott, Yavapai County, Arizona 86305 for the sum of the full parcel of \$60,000.00 and with the debtor-husband owning an undivided one-half interest and subject to deduction for an 8% real estate commission, proration of taxes to the date of closing, and 1% Sellers' closing expense.

YOUR RIGHTS MAY BE AFFECTED. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the Court to consider your views on the motion, then within 21 days from the date of this notice, you or your attorney must:

- * File with the Court a written request for a hearing, or if the court requires a written response, an answer, explaining your position at:

Clerk
U.S. Bankruptcy Court
Atrium Two, Suite 800
221 E. Fourth Street
Cincinnati, Ohio 45202

If you mail your request or response to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to the undersigned attorney at the address listed below together with all of the parties listed on the service list which appears on the last page of the motion which is on file with the Office of the Clerk at the addresses listed thereon.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

DATED: February 12, 2014

/S/ E. HANLIN BAVELY
E. Hanlin Bavely, Esquire

850 Tri-State Building
432 Walnut Street
Cincinnati, OH 45202
(513) 621-6621

Old Republic National Title Insurance Company – Issued by
Yavapai Title Agency, Inc.

Order No.: 08017709-KTM

Your No.: NKJ\smr\

SCHEDULE A - continued

Exhibit A

All that portion of Lots 3 and 4 of Section 32, Township 14 North, Range 2 West, Gila and Salt River Base and Meridian, Yavapai County Arizona, described as follows:

BEGINNING at the Northwest corner of Lot 8, Block "A", MILE HIGH PARK, according to the plat of record in the office of the Yavapai County Recorder in Book 3 of Maps, page 33;

**Thence South 76° 3' East, 218.57 feet;
Thence North 46° 45' East, 243.76 feet;
Thence North 58° 32' West, 147.68 feet;**

Thence North 22° 15' East, 40.00 feet to the Southeast corner of that certain property conveyed to Joseph G. Funke. et ux, by instrument recorded July 20, 1964 in Book 330 of Official Records. page 279 and as corrected by instrument in Book 331, page 355 of the Official Records of Yavapai County;

Thence North 22° 15' East, 72.06 feet along the East line of the said Funke property:

Thence North 16° 35' East, 119.32 feet along the East line of said Funke property to the Northeast corner thereof, said corner also being the Southwest corner of the Proper property, as recorded in Book 704 of Official Records, pages 435 – 436, Yavapai County Recorders Office;

Thence North 65° 41' 33" West, 290.99 feet (record North 65° 34' West, 291.42 feet) along the North line of the Funke property;

Thence North 76° 49' 7" West, 137.38 feet (record North 76° 38' West, 137.19 feet) along the North line of the Funke property;

Thence North 85° 7' 59" West, 113.12 feet (record North 84° 56' West, 113.23 feet more or less) along the North line of the Funke property to a point on the East right of way line of Downer Trail, as recorded in Book 11 of Maps, page 37, Yavapai County Records;

Thence North 21° 7' 1" East, 134.62 feet (record North 21° 11' East, 134.75 feet) along the East right of way line of Downer Trail;

Thence North 38° 55' 49" East, 167.28 feet (records North 39° 11' 39" East) along the East right of way line of Downer Trail;

Thence North 2° 40' 52" West, 109.26 feet (record North 2° 29' West) along the East right of way line of Downer Trail;

Thence North 61° 4' 38" West, 224.18 feet (record North 60° 55' 30" West, 224.55 feet) to the TRUE POINT OF BEGINNING;

Thence North 25° 56' 26" West, 50.00 feet along the East right of way line of Downer Trail;

Thence North 81° 18' 27" East, 31.40 feet;

Thence North 62° 44' 42" East, 97.06 feet;

Thence North 51° 47' 39" East, 70.20 feet;

**Old Republic National Title Insurance Company – Issued by
Yavapai Title Agency, Inc.**

Order No.: 08017709-KTM
Your No.: NKJ\smr
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SCHEDULE A - continued

Thence North 31° 56' 43" East, 48.90 feet;

Thence North 51° 2' 31" East, 155.08 feet;

Thence North 87° 21' 10" East, 101.00 feet;

Thence South 34° 28' 41" East, 213.01 feet;

Thence South 16° 26' 35" East, 147.54 feet;

Thence North 66° 36' 12" West, 213.82 feet;

Thence South 85° 23' 56" West, 125.07 feet;

Thence North 44° 34' 47" West, 82.94 feet;

Thence South 61° 34' 19" West, 206.06 feet to the TRUE POINT OF BEGINNING.

B: 4820 P: 498 06/30/2011 12:15:51 PM TRA
Ana Wayman-Titus
OFFICIAL RECORDS OF YAVAPAI COUNTY \$14.00
PIONEER TITLE AGENCY INC 2011-0034487

at the request of Pioneer Title Agency, Inc.

When recorded mail to
William Funk
1347 Custer Ave.
Cincinnati, OH 45208

B: 4820 P: 498 06/30/2011 12:15:51 PM TRA
\$14.00 Page: 1 of 2 2011-0034487

00355479 - DIC

TRUST DECLARATION/CERTIFICATION

DATE: June 2, 2011

TO: Pioneer Title Agency, Inc.

The Undersigned being of legal age, declares under penalty of perjury:

1. Declarant(s) certifies the existence of the following described Trust and states that he/she/they are all of the current Trustees.

Name of Trust: The Barbara J. Funk Self Declaration of Trust

Date of Trust: January 2, 1991

Trustor/Settlor(s): William Funk and David Funk

Original Trustee(s): Barbara J. Funk

2. The trust is REVOCABLE ☒ IRREVOCABLE (check one) and the following party(ies), if any, are identified as having power to revoke the Trust:

3. The power of the Trustee(s) include:

(a) The power to sell, convey and exchange the trust property ☒ Yes ☐ No (check one)

(b) The power to borrow money and encumber the trust property with a Deed of Trust or Mortgage ☒ Yes ☐ No (check one)

4. The trust ☐ DOES ☒ DOES NOT (check one) have multiple Trustees. If the trust has multiple Trustees, the signatures of (mark one of the following)

☐ ALL of the Trustees are required to exercise the powers of the Trust

☐ ANY (specify number) of the Trustees are required to exercise the powers of the Trust

5. Declarant(s) states(s) that the following named Trustee(s) is/are fully empowered to act for said Trust and is/are properly exercising his/her/their authority under said Trust in negotiating for, contracting for, and executing the document(s) attached hereto, or set forth below, and that no Trustee(s) other than the following named Trustees are necessary under the Trust to sign said document(s):

Name(s) and address(es) of Trustee(s) authorized to sign:

William Funk

David Funk

1347 Custer Ave.

4311 Spencer Street

Cincinnati, OH 45208

Las Vegas, NV 89119

Nature of Documents: Any and All

- Signed under penalty of perjury, this 24 day of June, 2018

~~The Barbara J. Funk Self Declaration of Trust~~

[Signature]

~~Trustee~~ (Signature)

David Funk, Trustee

Trustee Name Typed or Printed

Notary Public

My commission expires: 5/23/12

